

**REMARKS**

The Applicants gratefully acknowledge the Examiner's allowance of Claims 11-5. The Examiner, however, provides a number of rejections and we list them here in the order in which they are addressed:

I. Claims 16-18 and 26 are rejected under 35 U.S.C. § 112 ¶ 2 as allegedly being indefinite.

II. Claims 1-10 and 19-21 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by United States Patent No. 6,813,518 to Kupper.

**I. Claims 16-18 and 26 Are Definite**

The Examiner kindly identified three typographical errors in Claims 16-18 regarding a mis-identified dependency to Claim 10. The Applicants have now amended Claims 16-18 to depend from Claim 11 as initially intended. The Applicants now believe that Claims 16-18 are allowable.

The Examiner further believes that Claim 26 does not provide an antecedent basis for the term "said computer". Without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 26 to recite that "said system further comprises a computer". This amendment is made to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application. The Applicants now believe that Claim 26 is allowable.

The Applicants, therefore, respectfully request the Examiner to withdraw the present rejection.

## II. Claims 1-10 And 19-21 Are Not Anticipated By Kupper

As the Examiner is well aware, a single reference must disclose each limitation of a claim in order for that reference to anticipate the claim. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). This criterion is not met with the Kupper reference.

The Examiner states that:

The Kupper (US 6,813,518) patent describes an implantable system (Fig. 5) for terminating atrial fibrillation comprising both pacemaker elements ... and defibrillator elements ... connected to a plurality of atrial and ventricular pacing leads ... The atrial and ventricular lead electrodes are configured to be simultaneously paced ...

*Office Action pg 4 ¶ 4.* The Applicants disagree. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have canceled Claims 1-10. Further, the Applicants have amended Claim 19 that corrects two spelling errors in the preamble and recites a new step (d) comprising “diagnosing said patient as having cardiac tachycardia”<sup>1</sup>. See, *Applicants' Specification, pg 24 ln 12*. Claims 23 – 25 are concomitantly amended to further define specific types of diagnosed cardiac tachycardia as originally claimed. The Examiner is requested to note that Kupper does not contemplate any methods to diagnose any cardiac tachycardias. In fact, the Kupper patent does not contain any form of the word “diagnose”. These amendments are made only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

Further, the Examiner is respectfully requested to reconsider the argument that:

... Kupper is capable of sensing cardiac signals indicative of “premature atrial contractions” (PACs) or “premature ventricular contractions (PVCs) ... (col 13, lines 15-22). The Examiner considers these signals to be “earliest” arriving of the cardiac signals from the atria and ventricle, respectively.

*Office Action pg 4.* The Examiner is requested to take note that even if correct (which is not certain because the Examiner is clearly guessing) Kupper does not teach that PACs and PVCs are associated with cardiac tachycardias, but only with atrial fibrillation:

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<sup>1</sup> The Applicants believe this amendment is consistent with the Examiner's suggestion regarding the allowability of Claims 22-25. *Office Action, pg 5 ¶ 8.*

At block 615, it may be determined whether atrial fibrillation is detected. ... For example, the sensing of a premature atrial contraction (PAC) or a premature ventricular contraction (PVC) is known in the art to indicate that atrial fibrillation is occurring. The PAC/PVC may be sensed, for example, by one or more of the sensing leads described above or by activiy sensor 11.


*Kupper, col 13 ln 15-22* [emphasis added]. Clearly, Kupper does not teach utilizing an earliest arriving electrical activity to diagnose a cardiac tachycardia. Nevertheless, Claim 19 has been amended as described above which the Applicants believe is allowable as Kupper teaches no methods to diagnose ventricular tachycardia. Further, the new Claim 27 is presented which combines the elements of Claim 19 and Claim 22 that the Examiner has indicated is also allowable.

The Applicants, therefore, respectfully request the Examiner to withdraw the present rejection.

### **CONCLUSION**

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

Dated: 10/23/2006



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